

FILED

United States District Court

JUL 16 2008

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Venue: San Francisco

V.

CRIMINAL COMPLAINT

MIGUEL TUZ-CANTE

CASE NUMBER:

3 08 70449

MEJ

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about July 05, 2008 in Sonoma County, in the Northern District of California defendant(s) did,

OFFENSE: MIGUEL TUZ-CANTE, an alien, after having been removed, excluded, and deported from the United States, was thereafter found in the United States without having obtained the express consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission into the United States, in violation of Title 8 United States Code, Section(s) 1326.

I further state that I am a(n) Deportation Officer and that this complaint is based on the following facts:
Official Title

SEE ATTACHED AFFIDAVIT IN SUPPORT OF THIS COMPLAINT

PENALTIES: Imprisonment for not more than 10 years, a fine of not more than \$250,000.00, a \$100.00 dollar special assessment, and 3 years supervised release.

APPROVED AS TO FORM:


ASSISTANT UNITED STATES ATTORNEY

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Warrant of Arrest Requested: ☐ Yes ☒ No

Bail Amount: **NO BAIL**


Signature of Complainant

Sworn to before me and subscribed in my presence,

7-16-08 at San Francisco, California
Date City and State

Honorable Maria-Elena James
United States Magistrate Judge

Name & Title of Judicial Officer


Signature of Judicial Officer

STATE AND NORTHERN DISTRICT OF CALIFORNIA)
) ss, AFFIDAVIT
CITY AND COUNTY OF SAN FRANCISCO)

I, Cesar J. Lopez, Deportation Officer, U.S. Immigration and Customs Enforcement (ICE), being duly sworn, depose and state:

I. INTRODUCTION AND PURPOSE OF AFFIDAVIT

1. This affidavit is submitted in support of a criminal complaint against MIGUEL TUZ-CANTE, for violating 8 U.S.C. § 1326. The facts set forth in this Affidavit are based on my review of TUZ-CANTE'S official Immigration file (No. A79 365 887), my personal observations, my training and experience, and where noted, information related to me by other law enforcement officials. However, the facts set forth in this Affidavit are not all facts related to TUZ-CANTE that I know.

II. AGENT'S BACKGROUND AND EXPERTISE

2. I have been a Deportation officer with the U. S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), formerly the United States Department of Justice (DOJ), Immigration and Naturalization Service (INS), for approximately 14 years. I am currently assigned to ICE's San Francisco, California office, and I am responsible for enforcing federal criminal statutes involving criminal aliens who reenter the United States illegally.

III. APPLICABLE LAW

3. Title 8 U.S.C. § 1326 provides criminal penalties for “any alien who . . . has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien’s reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act”

IV. FACTS ESTABLISHING PROBABLE CAUSE

4. MIGUEL TUZ-CANTE is a 43 year-old male who is a native and citizen of Mexico. TUZ-CANTE was deported from the United States to Mexico on May 29, 2002, August 02, 2002 and October 11, 2003. TUZ-CANTE last entered the United States illegally on an unknown date in February 2008 by voluntarily crossing into Arizona through the international border with Mexico by foot. TUZ-CANTE knowingly remained in the United States without first having

obtained the consent to reapply for admission from the Attorney General of the United States or the United States Secretary of Homeland Security.

5. The official Immigration file for TUZ-CANTE contains three executed Warrants of Removal. The Warrants of Removal are dated May 29, 2002, August 02, 2002 and October 11, 2003, the dates that TUZ-CANTE was deported from the United States to Mexico.

6. On or about July 05, 2008, an ICE agent encountered TUZ-CANTE pursuant to his release from the Sonoma County Jail in Santa Rosa, California on unrelated charges. TUZ-CANTE stated that his name was MIGUEL TUZ-CANTE. Subsequently, the agent lodged an ICE detainer against him.

7. On July 09, 2008, Immigration Enforcement Agent Shawn Dionida interviewed TUZ-CANTE at the ICE office in San Francisco, California. After TUZ-CANTE was advised of his Miranda rights and the right to speak with the consular or diplomatic officers of his country of citizenship, he admitted that his true name was MIGUEL TUZ-CANTE. TUZ-CANTE admitted that he was a citizen and national of Mexico and that he had been previously deported from the United States. He also admitted that he illegally reentered the United States on an unknown date in February 2008.

8. On July 11, 2008, a full set of rolled fingerprints belonging to TUZ-CANTE was submitted the Automated Fingerprint Identification Center ("AFIS"), for verification of the identity. The fingerprint examiner positively identified the fingerprint as belonging to TUZ-CANTE who had previously been removed from the United States as referenced in paragraph 4 and 5.

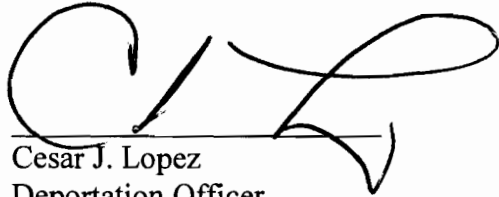
9. On August 01, 2002, MIGUEL TUZ-CANTE was sentenced to 2 months imprisonment, and one year of supervised release, following a conviction for a violation of 8 U.S.C. § 1326. This term of supervised release was revoked on January 23, 2003, and MIGUEL TUZ-CANTE was sentenced to an additional three months imprisonment.

10. On January 22, 2003, MIGUEL TUZ-CANTE was sentenced to 13 months imprisonment, and three years of supervised release, following a conviction for a violation of 8 U.S.C. § 1326.

11. There is no indication in ICE's official files that TUZ-CANTE has applied for or been granted the requisite permission to reenter the United States from either the Attorney General of the United States or the Secretary of Homeland Security.

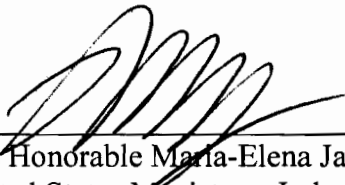
V. CONCLUSION

12. On the basis of the above information, I submit that probable cause exists to believe that MIGUEL TUZ-CANTE illegally reentered the United States following deportation, in violation of 8 U.S.C. § 1326.



Cesar J. Lopez
Deportation Officer
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
San Francisco, California

Subscribed and sworn to before me this 16 day of July, 2008.



The Honorable Maria-Elena James
United States Magistrate Judge
Northern District of California
San Francisco, California